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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

FRANCO RINCON, Plaintiff and Appellant, v. RICHMOND & RICHMOND, Defendants and Respondents.	G046415 (Super. Ct. No. 30-2010-00413323) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James J. Di Cesare, Judge. Affirmed.

Law Offices of Charles Don Crawford and Charles Don Crawford for Plaintiff and Appellant.

Sedgwick LLP, Frederick B. Hayes and Chelsea N. Trotter for Defendants and Respondents.

Franco Rincon appeals from a judgment in favor of Scott D. Richmond and his law firm, Richmond & Richmond (hereafter referred to collectively and in the singular as "Richmond"), after the trial court granted Richmond's motion for summary judgment in this legal malpractice action. Rincon contends the trial court erroneously concluded his action was barred by the one-year limitations period. (Code Civ. Proc., § 340.6.) We find no error and affirm the judgment.

FACTS & PROCEDURE

The facts are essentially undisputed. James and Phyllis Cockrum were an elderly couple. Rincon became friends with the Cockrums when he came to the United States from Mexico in the mid-1970s. Rincon lived with the Cockrums from 1977 until 1985, and thereafter remained significantly involved in their lives; he considered himself as being like a son to the Cockrums and a part of their family.

The Cockrums retained Richmond in 1999 to prepare their estate plan, including a family trust (the Trust) and wills. The Trust provided that upon James's death, James and Phyllis's interest in a condominium (the Greenleaf property), which they bought as partners with Rincon several years earlier, would be distributed to Rincon. Following both James's and Phyllis's deaths, their remaining trust estate would be divided equally between their two daughters, Rebecca Rea Cockrum Daher (Daher) and Phyllis Adrienne Cockrum Kirkey (Cockrum-Kirkey). The wills were "pour over" wills that left the residue of their estates to the Trust to be distributed in accordance with the terms of the Trust.

In 2003, after Phyllis broke her hip, Rincon moved back in with the Cockrums to help care for her. In May 2003, Richmond prepared a first amendment to the Trust prohibiting either of their daughters from serving as successor trustee.

Thereafter, the Cockrums made several donative transfers of a variety of personal property, cash, and investment and bank accounts to Rincon. They also conveyed their interest in the Greenleaf property to Rincon. Richmond prepared the

documents concerning the real property transfer, which was completed in October 2007 (the quitclaim deed was executed October 10, 2007, and recorded October 17, 2007). Richmond also prepared a second amendment to the Trust declaring that any challenge to the gift of their interest in the Greenleaf property to Rincon would be deemed a contest of the Trust.

Phyllis died in November 2007. In 2008, Richmond prepared another amendment to the Trust for James. (This amendment, which is dated February 5, 2008, was titled a first amendment to the Trust; for convenience and clarity we will refer to it as the February 2008 Trust Amendment.) The February 2008 Trust Amendment provided that upon James's death, his estate would be divided equally between the Cockrums' two daughters and Rincon.

James died in January 2009. On March 13, 2009, Rincon received a letter from an attorney representing the Cockrums' daughters informing him the daughters intended to file a probate petition, and asked that Rincon deliver to the attorney any of James's wills or estate planning documents he had in his possession. On March 30, 2009, Rincon retained his current attorney, Charles Don Crawford, to defend him in the probate proceedings, and he began incurring attorney fees and costs related to the probate court claims. Attorney Crawford advised the daughters' attorney that Rincon was a beneficiary under the Trust and he requested an accounting of the will estate and trust assets.

In April 2009, Daher filed petitions in the Orange County Superior Court, one pertaining to the Trust and one pertaining to James's estate. Rincon's opening brief states, without reference to the record, he was not served with the Daher's petitions until July 2009. At his deposition, he testified he received them in late April 2009.

Daher's April 2009 petitions sought to invalidate transfers made to Rincon under the Trust and by the estate on the grounds that any such transfers were presumptively invalid under Probate Code section 21350 because Rincon was a care custodian. Under that section, any donative transfer to a care custodian is presumed to be

invalid unless one of the exceptions contained in Probate Code section 21351 apply, which include that the transferor is related by blood or marriage to or is a cohabitant or registered domestic partner of the transferee; the instrument(s) are reviewed by an independent attorney who counsels the transferor to determine if the transfers were the result of fraud, menace, duress, or undue influence and who executes a certificate of independent review; or the court finds by clear and convincing evidence transfers were not the result of fraud, menace, duress, or undue influence by the transferee. No certificates of independent review were obtained by Richmond when he prepared the quitclaim deed conveying the Greenleaf property to Rincon in 2007, or when he prepared the February 2008 Trust Amendment leaving one-third of the Trust assets to Rincon. Richmond did send James a letter in August 2008, warning James there were risks in making donative transfers to Rincon because he might qualify as a caregiver. The letter advised James the gifts and changes to his trust distribution should be reviewed by an independent attorney, or "[a]t a minimum, [that he] should write a letter to a friend or other witness about [his] intentions."

Daher's April 2009 petitions sought return of numerous items belonging to the Trust and estate that Rincon allegedly removed from her parents' residence including: a coin collection, cash, a camera, a computer, a truck, silverware, paintings, original estate planning documents, and the contents of two safes. The petitions sought to invalidate numerous donative transfers made by James to Rincon of Trust and estate assets including the interest in the Greenleaf property, numerous bank and investment accounts that were held in the name of the Trust (but on which, apparently James designated Rincon as the surviving beneficiary), and title to the truck.

On August 24, 2009, Rincon's attorney filed objections to the petitions, which included arguing the various transfers to Rincon were not presumptively invalid under Probate Code section 21350 because he was a "family member."

On August 26, 2009, Cockrum-Kirkey filed an application for a safe harbor determination that her proposed petition to invalidate donative transfers of Trust assets to Rincon, because they were presumptively invalid under Probate Code section 21350, did not constitute a contest under the provisions of the Trust. Her proposed petition detailed the Trust and its amendments including the February 2008 trust amendment by which Rincon was to receive one-third of the Trust assets on James's death. The petition sought to invalidate donative transfers made to Rincon by James from the Trust including the Greenleaf property and numerous bank accounts that belonged to the Trust, but on which James had changed the vesting after Phyllis's death. Cockrum-Kirkey's August 2009 petition also sought to invalidate any transfer or gift to Rincon of a one-third interest in the remaining assets of the Trust. Rincon was served with the safe harbor petition in September 2009.

On August 27, 2010, Rincon agreed to settle the probate court proceedings, after a judge pro tem told Rincon and his current attorney, Crawford, at a mandatory settlement conference it would be "next to impossible to defeat the presumptions of undue influence as a caretaker." The settlement allowed Rincon to keep full title to the Greenleaf property, but invalidated all other transfers and gifts to Rincon, and required him to return all personal property, documents, accounts, and cash.

On October 1, 2010, Rincon filed the present legal malpractice action against Richmond. His complaint alleged Richmond was negligent by not properly advising the Cockrums about section 21350 and its potential effect on the gifts they made to Rincon. Rincon sought damages because he "ha[d] been deprived of the full value of the gifts, bequests and inheritance" from the Cockrums and had incurred other losses arising from the probate proceedings.

After the trial court overruled Richmond's demurrer, he filed a motion for summary judgment. Richmond asserted Rincon's legal malpractice claim was barred by the one-year statute of limitations (Code Civ. Proc., § 340.6), because Rincon discovered

the acts constituting the alleged negligence and sustained actual injury no later than April 2009 when the probate petitions challenging the transfers were filed and Rincon began incurring attorney fees and defense costs in the probate proceedings. Richmond also asserted he did not breach any duty of care owed Rincon.[1] The trial court granted summary judgment, concluding Rincon's complaint was time barred, and judgment was entered in favor of Richmond.

DISCUSSION

Rincon contends the trial court erred in concluding his malpractice action was barred by the one-year statute of limitations, and thus the trial court should not have granted summary judgment. We disagree.

A. Summary Judgment Standard of Review

"Summary judgment is appropriate only if there is no triable issue of material fact and the moving party is entitled to judgment in its favor as a matter of law. [Citation.] . . . A defendant moving for summary judgment . . . must show that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense. [Citation.] The defendant can satisfy its burden by presenting evidence that negates an element of the cause of action or evidence that the plaintiff does not possess and cannot reasonably expect to obtain evidence needed to support an element of the cause of action. [Citation.] If the defendant meets this burden, the burden

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[1] Richmond did not, and does not, argue he owed no duty of care to Rincon, who was not his client. (See generally *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304 [nonclient adequately alleges breach of estate planning attorney's duty of care to intended beneficiary of will where he failed to properly advise testator of consequences of section 21350 and failed to refer testator to independent counsel to obtain certificate of independent review].) Rather, Richmond argued below that he satisfied his duty by writing James several months after the February 2008 trust amendment was executed warning him of the risks inherent in gifts to a caregiver. The trial court did not rule on this issue, and the argument is not renewed on appeal.

shifts to the plaintiff to set forth 'specific facts' showing that a triable issue of material fact exists. [Citation.] [¶] We review the trial court's ruling de novo, liberally construe the evidence in favor of the party opposing the motion, and resolve all doubts concerning the evidence in favor of the opposing party. [Citation.] We will affirm an order granting summary judgment . . . if it is correct on any ground that the parties had an adequate opportunity to address in the trial court, regardless of the trial court's stated reasons. [Citations.]" (*Securitas Security Services USA, Inc. v. Superior Court* (2011) 197 Cal.App.4th 115, 119-120.)

B. Statute of Limitations for Legal Malpractice

As relevant here, "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. . . . [I]n no event shall the time for commencement of legal action exceed four years except that the period shall be tolled during the time that any of the following exist: [¶] (1) The plaintiff has not sustained actual injury. . . . " (Code Civ. Proc., § 340.6, subd. (a).)

"'Thus, the limitations period is one year from actual or imputed discovery, or four years (whichever is sooner), unless tolling applies.' [Citation.] Although the language of the statute is ambiguous on the point, '[t]he tolling provisions of [Code of Civil Procedure] section 340.6 apply to both the one-year and the four-year provisions.' [Citations.]" (*Croucier v. Chavos* (2012) 207 Cal.App.4th 1138, 1145-1146 (*Croucier*).)

Rincon filed his malpractice complaint October 1, 2010, which was within the four-year limitations period assuming Richmond's alleged negligence began with the October 2007 transfer of the Greenleaf property. Thus, the question is whether the one-year limitations period bars the action. There are two inquiries to be made: (1) did

Rincon discover Richmond's alleged negligence more than one year prior to October 1, 2010? (2) If so, was the statute of limitations tolled because he had not sustained actual injury?

The first question is easily answered in the affirmative. In his opening brief, Rincon devotes a single sentence to the issue of when he had notice of the alleged negligence stating he "first became aware of Richmond's negligence after consulting with an attorney in April 2009." Rincon made the same concession in his opposition papers in the trial court. Rincon retained his attorney on March 30, 2009, after the daughters' attorney advised him they intended to challenge the transfers. Daher's petition to invalidate transfers made to Rincon because they were presumptively invalid under Probate Code section 21350 was filed in April 2009.

At oral argument, Rincon backtracked. He argued that in April 2009, he was only put on notice of Richmond's alleged negligence concerning the inter vivos donative transfers, but had no notice of any challenge to his right to receive one-third of James's estate under the Trust and will—problems with those gifts were not implicated by the petitions and were not raised until the settlement conference in August 2010. "New issues cannot generally be raised for the first time in oral argument. [Citation.]" (*New Plumbing Contractors, Inc. v. Nationwide Mutual Ins. Co.* (1992) 7 Cal.App.4th 1088, 1098.) Moreover, even if Daher's April 2009 petition did not specifically challenge the February 2008 Trust Amendment leaving Rincon one-third of the remaining Trust assets, the safe harbor petition filed by Cockrum-Kirkey on August 26, 2009 did. Rincon admitted he was served with the safe harbor petition in September 2009.

Rincon's malpractice complaint was filed more than one year after he discovered Richmond's alleged negligence and therefore is time barred unless the statute of limitations was tolled because he had not suffered actual injury at the time he discovered the alleged negligence. (Code Civ. Proc., § 340.6, subd. (a)(1).) As this court

explained in *Croucier, supra,* 207 Cal.App.4th at page 1147, "This statutory tolling provision is rooted in the required element of 'actual loss or damage' in a professional negligence action. [Citation.] 'If the allegedly negligent conduct does not cause damage, it generates no cause of action in tort. [Citation.] The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence.' [Citation.] '[D]etermining when actual injury occurred is predominantly a factual inquiry. [Citations.] When the material facts are undisputed, the trial court can resolve the matter as a question of law. . . .' [Citation.]"

Rincon argues he did not suffer actual injury until August 27, 2010, when the settlement judge told him he had little chance of overcoming "the presumptions of undue influence as a caretaker," prompting him to accept a settlement with the Cockrums' daughters that gave him clear title to the Greenleaf property, but to forego his one-third share of James's estate (and return all personal property, money, bank accounts, etc., he had taken from James's home or that had been transferred to him). But, "Actual injury occurs when the [plaintiff] suffers any loss or injury legally cognizable as damages in a legal malpractice action based on the asserted errors or omissions. [Citations.] . . . [Code of Civil Procedure] section 340.6, subdivision (a)(1), will not toll the limitations period once the [plaintiff] can plead damages that could establish a cause of action for legal malpractice." (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 743 (*Jordache*).)

"The test for actual injury . . . is whether the plaintiff has sustained any damages compensable in an action . . . against an attorney for a wrongful act or omission arising in the performance of professional services. . . . " (*Id.* at p. 751.) "[O]nce the plaintiff suffers actual harm, neither difficulty in proving damages nor uncertainty as to their amount tolls the limitations period." (*Id*. at p. 752.) "There is no requirement that an adjudication or settlement must first confirm a causal nexus between the attorney's

error and the asserted injury. The determination of actual injury requires only a factual analysis of the claimed error and its consequences. The inquiry necessarily is more qualitative than quantitative because the fact of damage, rather than the amount, is the critical factor." (*Ibid*.)

We agree with the trial court that Rincon suffered actual injury when he began incurring legal expenses to defend against the daughters' petition to invalidate the transfers to Rincon. In *Adams v. Paul* (1995) 11 Cal.4th 583, 590 (*Adams*), our Supreme Court observed an intended beneficiary of a negligently prepared testamentary instrument is not harmed when the instrument is prepared because at that point "the attorney's negligence may have created only the potential for future harm[,]" but the negligence is actionable once the testator dies and the beneficiary is forced to incur legal costs defending the instrument. (*Adams, supra*, 11 Cal.4th at p. 590 citing, among others, "*Heyer v. Flaig* (1969) 70 Cal.2d 223 . . . [beneficiary's actionable injury for negligence in drawing of will did not arise until testator's death because no recognized legal rights under will until that time]; *Horne v. Peckham* (1979) 97 Cal.App.3d 404, 417 . . . [negligent preparation of trust documents did not cause 'actual and true damage . . . until the trust was challenged and plaintiffs were forced to pay legal fees to defend' them].")

Jordache, supra, 18 Cal.4th 739, and *Croucier*, *supra*, 207 Cal.App.4th 1183, are instructive. In both cases the former client was determined to have suffered actual injury when they began incurring legal costs in underlying proceedings related to or as a result of the alleged malpractice, regardless of the ultimate resolution of those underlying proceedings.

In *Jordache, supra,* 18 Cal.4th 739, Jordache sued its former attorneys Brobeck, Phleger & Harrison law firm (Brobeck), for not tendering its defense in an underlying lawsuit filed against it by the owner of Guess? jeans, to its insurance carrier due to Brobeck's mistaken belief there was no coverage. (*Jordache*, *supra*, 18 Cal.4th at

p. 744.) Jordache knew of Brobeck's alleged negligence no later than December 1987, after newly retained counsel advised Jordache there was potential coverage and Brobeck had been negligent in its advice. (*Ibid*.) Through its new counsel, Jordache formally tendered the defense of the Guess? jeans action to its insurers, and then it sued the insurers in 1988 for failure to provide coverage. (*Ibid*.) The underlying Guess? jeans action settled in May 1990, and the coverage suit settled July 31, 1990. (*Id.* at p. 746.)

Jordache filed its malpractice complaint against Brobeck on August 15, 1990. (*Ibid*.) In the face of a summary judgment motion brought on the ground the action was time barred, Jordache argued it did not suffer *actual injury* until it settled the insurance coverage suit in July 1990 for less than the full amount of its claim. (*Jordache*, *supra*, 18 Cal.4th at pp. 746-747.) The California Supreme Court concluded the malpractice action was time barred because Jordache sustained actual injury no later than December 1987. (*Id*. at p. 752.) The court held Jordache suffered damages no later than the date it hired new counsel to litigate the underlying Guess? jeans action and pursue its insurer for coverage. At that point Jordache "had lost millions of dollars—both in unpaid insurance benefits for defense costs in the [underlying] action and in lost profits from diversion of investment funds to pay these defense costs." (*Id*. at p. 752.)

The Supreme Court rejected the argument Jordache's actual injury did not occur until the insurance coverage litigation was settled because until then the injury was only speculative. "[S]peculative and contingent injuries are those that do not yet exist, as when an attorney's error creates only a potential for harm in the future. [Citations.] An existing injury is not contingent or speculative simply because future events may affect its permanency or the amount of monetary damages eventually incurred. [Citations.] Thus, we must distinguish between an actual, existing injury that might be *remedied or reduced* in the future, and a speculative or contingent injury that might or might not *arise* in the future." (*Jordache*, *supra*, 18 Cal.4th at p. 754.) As the Supreme Court concluded, "[t]he loss or diminution of a right or remedy constitutes injury or damage. [Citation.]

Neither uncertainty of amount nor difficulty of proof renders that injury speculative or inchoate. [Citation.] The coverage action settlement was not the first realization of injury from the alleged malpractice; the settlement simply resolved one alternative means to mitigate that injury." (*Id.* at p. 744.)

In *Croucier, supra,* 207 Cal.App.4th 1138, defendant former attorney filed clients' action for breach of contract and fraud in October 2005, and on April 26, 2006, obtained for his clients a $1,132,148.10 default judgment against several individuals and corporations. On July 2, 2006, the former attorney secured a court order adding an additional corporation as an additional judgment debtor. For the next two years, however, the former attorney did nothing to enforce the default judgment. (*Id.* at p. 1142.) In June 2008, the clients retained new counsel to enforce the judgment and she immediately began the collection process. On June 12, 2008, the new attorney filed an action on behalf of the clients against the judgment debtors, and two individuals to whom the assets of the judgment debtors had been fraudulently transferred during the two-year hiatus in enforcement efforts. (*Id.* at p. 1143.)

On August 13, 2009, the clients filed their malpractice action against their former attorney. (*Croucier, supra,* 207 Cal.App.4th at p. 1143.) This court concluded the malpractice action was time barred. The clients had knowledge of their former attorney's alleged negligence by June 2008, when they retained new counsel. (*Id.* at p. 1147.) We rejected the clients' argument the statute of limitations should have been tolled either until plaintiffs had evidence the judgment was collectible at the time their former attorney committed malpractice but not collectible after June 2008, or until the fraudulent conveyance action was resolved. (*Id.* at p. 1149.) We found the clients "confuse the question of whether they had (as of June 2008) sustained 'actual injury' ([Code Civ. Proc.,] § 340.6, subd. (a)(1)) with two other questions: (1) whether they had sufficient evidence to prove damages in a malpractice action as of June 2008; and (2) whether all uncertainty had been removed with regard to the amount of damages they

had suffered." (*Id.* at p. 1148.) The clients suffered actual injury when they learned of the alleged negligence because by that time their ability to enforce the judgment was diminished, they were incurring costs in pursuing the fraudulent conveyance action against the judgment debtors, and had a claim for the lost time value of uncollected money and for the attorney fees they were paying their new attorney "above and beyond what needed to be incurred in the collection portion of the case as a result of [the former attorney's] alleged malpractice [Citation.]" (*Id.* at p. 1150.) The ultimate outcome of the collection litigation might impact the ultimate amount of damages they suffered, but it did not render the current actual injury speculative or contingent. (*Id.* at p. 1149.)

Truong v. Glasser (2009) 181 Cal.App.4th 102, is similarly instructive. In that case the clients/lessees entered into a lease and then a lease addendum in 2005 with the advice of their now former attorney. The clients obtained new counsel and in March 2006 litigation concerning the lease commenced. Judgment was entered against the clients/lessees in August 2007, and the lessor was awarded more than $220,000 in attorney fees. (*Id.* at pp. 106-107.) In September 2007, the clients sued their former attorney alleging he had been negligent in the advice he gave concerning the lease and lease addendum. (*Id*. at p. 108.) The trial court found the action was barred by the one-year statute of limitations and granted the attorney's motion for summary judgment. The Court of Appeal rejected the clients contention it did not sustain actual injury until it lost the underlying litigation with the lessor: "Plaintiffs first sustained actual injury when they were required to obtain and pay new counsel to file a lawsuit seeking to escape the consequences of their signing the lease and [l]ease [a]ddendum." (*Id*. at p. 114.)

Jordache, *Croucier*, and *Truong* are on point. Rincon began suffering actual injury from Richmond's alleged negligence in preparing the Greenleaf property transfer documents and the February 2008 Trust Amendment when litigation was commenced by the daughters seeking to set those transfers aside because Rincon was a care custodian and no certificate of independent review had been secured, and Rincon

began incurring attorney fees and litigation costs. That Rincon thought he could successfully defend the gifts and his inheritance under the trust either because he believed himself to be a "family member" or because he could prove by clear and convincing evidence the transfers were not the product of undue influence (see Prob. Code, § 21351, subd. (a) [presumption of invalidity does not apply if transferee is related by blood or marriage of, or domestic partner/cohabitant with transferor]; & (b) [presumption may be overcome by clear and convincing evidence transfer not product undue influence]), does not make his injury contingent or speculative. Even if he had succeeded in his defenses, he was injured by the litigation costs and loss of use of property during the time of the litigation.

Rincon's attempt to distinguish *Jordache* and *Truong* is unavailing. He argues this case is different because here the daughters were not trying to set aside only the Greenleaf property transfer or the February 2008 trust amendment leaving Rincon one-third of James's estate—the two matters that concerned Richmond's allegedly negligent advice—they were seeking to set aside *all* the other gifts of property, cash, and bank accounts their parents had made to Rincon in their final years as well, many of which were done without the Cockrums consulting Richmond. Accordingly, Rincon argues he would have been incurring legal costs in the probate proceedings anyway, and those costs cannot be separated from the costs associated with Richmond's alleged negligence. The distinction is without meaning—it only goes to the ultimate amount of Rincon's alleged damages, not whether he had suffered actual injury.

Rincon's heavy reliance on *Baltins v. James* (1995) 36 Cal.App.4th 1193 (*Baltins*), a case which precedes both *Adams, supra,* 11 Cal.4th 583, and *Jordache, supra,* 18 Cal.4th 739, for the proposition he was not injured by Richmond's alleged negligent preparation of the Greenleaf property transfer documents and the February 2008 Trust Amendment until there was a final judicial determination the transfers were invalid, is misplaced. In *Baltins,* defendant attorney advised plaintiffs, a husband and his second

wife, that the order setting aside the community property division in husband's marital dissolution action involving his first wife was not binding while it was on appeal. (*Baltins, supra,* 36 Cal.App.4th at p. 1197.) Relying on that advice, husband engaged in property transfers and other conduct which resulted in adverse rulings (e.g., fraud and breach of fiduciary duties) made in connection with a final judgment of dissolution that was entered nine years later. The *Baltins* court concluded plaintiffs' malpractice claim was not barred by the statute of limitations because "any error in [the former attorney's] advice was not determinable, and had no effect, until following his advice resulted in the adverse judgment in the dissolution action. [Citations.]" (*Id*. at p. 1208.)

Baltins, supra, 36 Cal.App.4th at page 1196, applied a "bright line test" developed by prior case law that "[i]f the existence or effect of a professional's error depends on a litigated or negotiated determination's outcome . . . actual injury occurs only when that determination is made." But our Supreme Court in *Jordache* disapproved of the language in *Baltins* "implying that 'actual injury' is determined by any bright line rule" (*Jordache, supra,* 18 Cal.4th at p. 761, fn. 9), although it agreed *Baltins* was an example of a situation in which adjudication of the related action was necessary to establish actual injury. (*Jordache, supra,* 18 Cal.4th at pp. 755, 759, 761.) Moreover, as *Jordache* noted, "[T]he alleged negligence in *Baltins* . . . was that the attorney predicted incorrectly how a court would resolve an issue in the future. Thus, the propriety of the legal advice, and hence the existence and effect of error, depended on the future resolution of the issue adversely to the client. [Citations.]" (*Jordache, supra,* 18 Cal.4th at p. 761.)

The facts here are more akin to the situation in *Jordache*. Rincon was aware of Richmond's alleged negligence in preparing the property transfer documents and the trust amendment and he began suffering injury in April 2009 as soon as the transfers were challenged and he began expending attorney fees in the probate litigation defending his inheritance. His injury was not dependent on the outcome of the probate

proceeding. Accordingly, the trial court correctly determined the malpractice complaint, filed in October 2010, was barred by the one-year statute of limitations (Code Civ. Proc., § 340.6).

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

O'LEARY, P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.